

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KETEMA ROSS, et al.,

Plaintiffs,

v.

JAY INSLEE, in his official capacity
as Governor of Washington, et al.,

Defendants.

NO: 2:14-CV-0130-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Joint Motion for Protective Order
(ECF No. 13). The motion is **GRANTED**.

IT IS HEREBY ORDERED:

1. This Order shall govern the designation, production, handling, and
treatment of, as well as the provision of access to the public, of all confidential
documents and information obtained or observed by the parties or their agents
which is confidential pursuant to RCW 10.77.210, chapter 70.02 RCW, RCW
74.04.060, RCW 42.56.230, RCW 74.34.095, chapter 70.24 RCW, RCW

1 70.96A.150, 42 U.S.C. §290dd-2; 42 C.F.R. Part 2, 45 C.F.R. Parts 160-164, and
2 other material protected by federal or state law, and which is obtained or observed
3 as a result of or in the course of this litigation. The purpose of this Order is to
4 protect the privacy of the individuals whose confidential public assistance records
5 and health information is sought in discovery or will be used at trial.

6 2. Documents:

7 When used in this Order, the word “documents” means all written, recorded
8 or graphic matter whatsoever, including, but not limited to, materials produced
9 pursuant to Civil Rule 34, by subpoena or by agreement, deposition transcripts and
10 exhibits, interrogatory answers, responses to requests for admission, and any
11 portion of any Court papers that quote from any of the foregoing.

12 3. Scope and Designation:

13 Any and all documents that include or reveal the names or other personally
14 identifying information of past or current individual Department of Social and
15 Health Services (DSHS) clients or past or present clients or constituents of
16 Plaintiffs, and any documents or information described in RCW 74.34.095(1), shall
17 be governed by this Order. As used herein, “personally identifying information”
18 shall include, but is not limited to, health care record information, any information
19 from which the identity of a client or constituent may be ascertained, and any
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1 information which is deemed confidential pursuant to RCW 74.04.060, RCW
2 70.02.050, RCW 42.56.230, RCW 74.34.095, and 45 CFR Parts 160-164.

3 4. Challenge to Confidentiality Designation:

4 If any party objects to the designation of any document(s) produced or filed
5 as “confidential,” under the above definition, that party may file a motion to
6 resolve the dispute regarding whether such document(s) qualifies for confidential
7 status. Interested parties shall attempt to resolve any such disagreements before
8 submitting them to the Court. Pending resolution of a dispute over the status of a
9 document under this Order, that document shall be considered a confidential
10 document subject to the protection of this Order. At all times, the party seeking to
11 assert a document’s confidentiality bears the burden of showing good cause
12 pursuant to Civil Rule 26(c).

13 5. Identification of Counsel:

14 For the purpose of this Order, “counsel” or “attorney” means counsel of
15 record for the parties of this action and all of their employees, contractors, sub-
16 contractors, agents and experts.

17 6. Use of Confidential Material:

18 Confidential records shall be used solely for the purpose of conducting the
19 action entitled Ross et al. v. Inslee, Cause No. CV-14-00130-TOR, unless the
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1 person who is the subject of such confidential material, or that person's legal
2 guardian, if applicable, authorizes its use for any other particular purpose.

3 7. Use and Designation of Confidential Material in Court Filings:

4 When the parties file pleadings, motions, affidavits, declarations, deposition
5 transcripts, briefs, or other documents with the Court that refer to individuals
6 covered by this Agreed Protective Order, the parties must ensure that the
7 individuals' names are not used and rather must replace each name with a
8 designated letter or letters. Absent circumstances not in the control of either party,
9 each individual covered by this Protective Order must be identified during
10 discovery, and the parties shall agree upon the unique assigned letter(s) designation
11 as soon as possible following identification of the individual and exchange of
12 confidential records. In the event a party files pleadings with the Court that refer
13 specifically to a person whose confidential information is the subject matter of this
14 Protective Order and whose identifying initials or letters have not yet been agreed
15 to, that party must notify opposing counsel as to the identity and corresponding
16 designated letter(s) contained in the pleadings.

17 If the individual who is the subject of the document(s) filed with the Court,
18 or that person's legal guardian, if applicable, authorizes a party to use the
19 individual's name, any party may reference the individual by name in the
20 document(s) filed with the Court.

1 Portions of confidential records (such as medical records) may be attached to
2 any pleadings, motions, affidavits, declarations, deposition transcripts, briefs, or
3 other documents filed with the Court, but all records that contain personally
4 identifying information must be filed under seal. When submitting or filing records
5 with the Court under seal, the parties shall use the following designation:

6 **CONFIDENTIAL. SUBJECT TO PROTECTIVE ORDER. THIS**
7 **ENVELOPE, CONTAINING THE ABOVE-IDENTIFIED PAPERS**
8 **FILED BY [NAME OF THE FILING PARTY], IS NOT TO BE**
9 **OPENED NOR THE CONTENTS THEREOF DISPLAYED TO**
10 **ANYONE OTHER THAN THE COURT AND ITS STAFF, OTHER**
11 **THAN BY COURT ORDER OR AGREEMENT OF THE PARTIES.**

12 Only the confidential records will be filed under seal. The pleadings,
13 motions, affidavits, declarations, deposition transcripts, briefs, or other documents
14 filed with the Court will not be filed under seal.

15 If the person who is the subject of the confidential records or that person's
16 legal guardian, if applicable, authorizes a party to use the confidential records, any
17 party may use or file the records in an unsealed form. Upon filing with the Court,
18 the portion of the confidential record that has not been filed under seal becomes
19 part of the public record.

20 8. Disclosure of Confidential Material:

All confidential records shall be controlled and maintained in a manner that
precludes access by any person not entitled to access under this Protective Order.

1 Any patient's confidential information shall be disclosed only to the following
2 persons:

3 (a) Counsel, including paralegal, investigative, secretarial, and clerical
4 personnel who are engaged in assisting such counsel in the above entitled
5 action;

6 (b) Any independent outside expert or consultant, and employees and
7 assistants under the control of such expert or consultant, who is engaged by
8 counsel in this litigation, whether or not such expert is paid directly by a
9 party;

10 (c) Any director, officer, or employee of a party who is requested by counsel
11 for such party to work directly on the above entitled action;

12 (d) Any deposition or trial witness;

13 (e) Any person who authored or received the particular confidential
14 information sought to be disclosed;

15 (f) Any court or other shorthand reporter or typist recording or transcribing
16 testimony; or

17 (g) The Court.

18 Confidential information shall not be disclosed to persons described in
19 Paragraphs 8(b), (c), or (d) unless or until such persons have been provided with a
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1 copy of this Protective Order and have agreed in writing to abide by and comply
2 with the terms and provisions therein.

3 9. Use of Confidential Information During Discovery:

4 Depositions. A party may designate as confidential the deposition transcript
5 and all exhibits to the deposition by indicating on the record at the deposition that
6 certain information is confidential and subject to the terms of this Protective Order.
7 Alternatively, the party may make a confidential designation by notifying all
8 parties in writing within twenty (20) days after the deposition transcript is received
9 by the party of the portions of the transcript and/or exhibits designated as
10 confidential. During this interim twenty (20) day period, the entire transcript and
11 the exhibits attached thereto shall be treated by all the parties as confidential. All
12 transcripts and deposition exhibits containing any confidential information shall be
13 marked: **“CONFIDENTIAL. Subject to restriction by a Protective Order.”**

14 Interrogatories, Requests for Production, and other discovery related matters.

15 Use of confidential information during discovery shall be designated as follows:

16 (a) To designate a document as one containing confidential information, the
17 party producing the document, shall stamp the first page and every page
18 thereafter as follows: **“CONFIDENTIAL. Subject to restriction by a
Protective Order.”**

19 (b) All confidential documents produced by the parties during discovery
shall be stamped as indicated in paragraph 9(a) above.

20 (c) Any responses to interrogatories, requests for production, or requests for
admission, which are designated by a party as containing confidential

1 information, shall be submitted in a separate document with each page
2 stamped as indicated in paragraph 9(a) above.

3 (d) If documents are produced on a computer disc, and all documents on the
4 disc contain confidential information, they shall all be designated
5 confidential by application to the disc of a sticker bearing the language set
6 out in paragraph 9(a). If any of the documents are used at depositions or
7 attached to pleadings, each page of these documents shall be stamped as
8 indicated in paragraph 9(a).

9 10. Use of Confidential Information at Hearing or Trial:

10 A party may, subject to the rules of evidence and order of the Court, use any
11 confidential information for any purposes at trial or at any hearing before a judicial
12 officer in the above entitled action. Any confidential information used in any court
13 proceeding shall not lose its confidential status through such use, unless the Court
14 orders otherwise.

15 11. Preservation of Rights and Privileges:

16 Nothing contained in this Protective Order shall (1) affect the right of any
17 party or witness to make any other type of objection or claim; or (2) diminish
18 Disability Rights Washington's federal access rights under 42 U.S.C. § 10801, et
19 seq., as amended; 42 U.S.C. § 15041, et seq.; and the regulations promulgated
20 thereunder.

1 12. Modification of the Protective Order:

2 This Protective Order shall not prevent a party from applying to the Court
3 for relief therefrom, or from applying to the Court for an additional protective
4 order, or for modification of this Order.

5 13. Storage and Destruction of Materials:

6 Within thirty (30) days after the conclusion of the above entitled action,
7 including, without limitation, any appeal or retrial, all confidential information,
8 including copies, extracts, or summaries, shall be destroyed or retained in a secure
9 place in a confidential manner consistent with the parties' respective internal
10 procedures. As to those materials which contain confidential information, but
11 constitute or reflect counsel's work product, all such work product and all copies
12 shall either be destroyed or retained by counsel in a secure place, subject to this
13 Protective Order.

14 14. Inadvertent Disclosure and Inadvertent Failure to Designate:

15 Should any confidential information be disclosed, through inadvertence or
16 otherwise, to any person not authorized to receive it under this Protective Order,
17 then the disclosing person(s) shall promptly: (a) identify the recipient(s) and the
18 circumstances of the unauthorized disclosure to the relevant producing person(s);
19 and (b) use best efforts to bind the recipients to the terms of this Protective Order.
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1 No information shall lose its confidential status because of its disclosure to a
2 person not authorized to receive it under this Protective Order.

3 If timely corrected, an inadvertent failure to designate qualified information
4 or items does not, standing alone, waive the designating party's right to secure
5 protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the
7 material is treated in accordance with the provisions of this agreement.

8 15. Upon conclusion of the above entitled action, the provisions of this
9 Protective Order shall continue to be binding.

10 16. This Protective Order shall remain in full force and effect until
11 modified, superseded, or terminated by consent of the parties or by Order of this
12 Court made upon reasonable written request.

13 **IT IS SO ORDERED.**

14 The District Court Executive is hereby directed to enter this Order and
15 provide copies to counsel.

16 **DATED** August 4, 2014.



Thomas O. Rice
THOMAS O. RICE
United States District Judge